(1)

Supreme Court, U.S.
FILED

02 353 AUG 21 2002

OFFICE OF THE CLERK

CASE NUMBER _____

In the Supreme Court of the United States

LOUIE CARRASCO

v.

STATE OF ARIZONA,

ON PETITION FOR A WRIT OF
CERTIORARI TO THE ARIZONA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

VERNON E. PELTZ
ATTORNEY AT LAW
PMB 351, 7925A N. Oracle,
Tucson, AZ 85704-6316
(520) 623-5225
(520) 623-5240 (fax)
ATTORNEY FOR PETITIONER

93 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the State of Arizona has convicted an innocent man whose conduct was never intended to be criminalized by Arizona Revised Statute § 13-2409.

2. Whether the State of Arizona's conviction of a practicing criminal defense attorney for obstructing justice because he told a family member that she did not have to speak with the police is a violation of the Petitioner's First Amendment right to freedom of speech, which is guaranteed to the Petitioner by the Fourteenth Amendment, and if so, whether the Petitioner's conviction in this case can be permitted to stand.

TABLE OF CONTENTS

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE CASE BY OTHER COURTS. 2

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED 2

THE CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED IN THE CASE 2

STATEMENT OF THE CASE 3

STAGE AT WHICH THE FEDERAL QUESTIONS WERE RAISED 14

REASONS FOR GRANTING REVIEW 15

CONCLUSION 28

APPENDIX A 1a

APPENDIX B 12a

APPENDIX C 14a

APPENDIX D 21a

APPENDIX E 22a

APPENDIX F 36a

APPENDIX G 56a

APPENDIX H 58a

TABLE OF AUTHORITIES

Cases

United States v. Cioffi,
493 F.2d 1111 (2nd Cir. 1974) 26

Board of Education v. Barnette,
319 U.S. 624 (1943) 16

Cantwell v. Connecticut,
310 U.S. 296 (1940) 16, 23, 24

Cole v. United States,
329 F.2d 437 (9th Cir. 1964), *cert denied*,
377 U.S. 954, 12 L.Ed.2d 497, 84 S.Ct 1630 (1964)
..... 26

Houston v. Hill,
482 U.S. 451 (1987) 21

Marbury v. Madison,
1 Cranch 137, 178 (1803) 17

State v. Snodgrass,
117 Ariz. 107, 570 P.2d 1280 (App. 1977) ... 5, 9,
19, 20

Stromberg v. California,
283 U.S. 359 (1931) 16

United States v. Aguilar,
515 U.S. 593 (1995) 21

United States v. Cintolo,
818 F.2d 980 (1st Cir. 1987) 27

United States v. Cueto,
151 F.3d 620 (7th Cir. 1998) 27

United States v. Williams,
874 F.2d 968 (5th Cir. 1989) 20

Walker v. Superior Court in and for County of Navajo,
919 Ariz. 424, 956 P.2d 1246 (Ariz. App. Div. 1
1998) 6, 7, 12, 15, 19, 27

Constitution and Statutes

28 U.S.C. §1257. 2

Arizona Revised Statute § 13-4433 . . . . . 6, 25

Arizona Revised Statute §13-2409 1, 2, 3, 4, 5, 6, 7,
9, 10, 12-14, 17, 18, 19, 22, 27

Article III, Section 2 of the United States Constitution
. 2

First Amendment of the United States Constitution
. . . . . 2, 11, 15, 16, 22, 24

Fourteenth Amendment, section one 1, 3, 16

CASE NUMBER _____

In the Supreme Court of the United States

LOUIE CARRASCO

v.

STATE OF ARIZONA,

ON PETITION FOR A WRIT OF
CERTIORARI TO THE ARIZONA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Vernon E. Peltz, on behalf of Louie Carrasco, respectfully petitions for Writ of Certiorari to review the judgment of the Arizona Supreme Court, which

denied the petitioner's petition for review of the Arizona Court of Appeal's decision reversing the decision of the trial judge which granted the petitioner's motion for acquittal.

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE CASE BY OTHER COURTS.

The opinion of the Arizona Court of Appeals (App. 1a-11a) is reported at 201 Ariz. 220, 33 P.3d 791 (Ariz. App. 2001).

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

May 23, 2002 is the date of the entry of judgment sought to be reviewed in this case. On May 23, 2002 the Arizona Supreme Court denied review of Petitioner's petition for review of the Arizona Court of Appeal's decision. There are no orders respecting a rehearing nor any orders granting an extension of time to file the petition for a writ of certiorari. This court has original jurisdiction of this matter pursuant to Article III, Section 2 of the United States Constitution. The statutory provision believed to confer jurisdiction on this Court to review the final judgment of the highest court in Arizona by writ of certiorari is 28 U.S.C. §1257.

THE CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED IN THE CASE

First Amendment of the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,

or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment, section one:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Arizona Revised Statute §13-2409 Obstructing criminal investigations or prosecutions; classification.

A person who knowingly attempts by means of bribery, misrepresentation, intimidation or force or threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer, magistrate, prosecutor or grand jury or who knowingly injures another in his person or property on account of the giving by the latter or by any other person of any such information or testimony to a police officer, magistrate, prosecutor or grand jury is guilty of a class 5 felony.

STATEMENT OF THE CASE

In order for this Court to determine whether the Petitioner's conduct was ever intended to be proscribed by Arizona Revised Statute § 13-2409 the facts that were established at trial are very important.

Unfortunately, the Arizona Court of Appeals, Division II ignored a long line of Arizona case law and rendered its decision in this case based only upon the facts contained within the State's brief. Arizona law provides that the appellant has the duty to provide the transcripts for the appeal filed in the Court of Appeals. The State did obtain and provide various transcripts for the record on appeal, but the State chose not to include any transcripts of the trial itself for the record on appeal. The Court of Appeals relied upon the facts as provided by the State in the Appellant's brief to render its decision. Therefore, two sets of operative facts exist; the facts the Arizona Court of Appeals erroneously relied upon in reaching its decision, and the facts adduced from the testimony of witnesses at the trial. The facts provided by the State do not include even half of the important events that transpired which led to the arrest and conviction of the Petitioner.

The Petitioner filed a motion to reconsider with the Court of Appeals asking that Court to reconsider using only the facts provided by the State to decide whether the trial judge abused his discretion when he granted the Petitioner's motion for acquittal after the verdict. That motion was denied, as was the Petitioner's petition for review filed with the Arizona Supreme Court. Despite these decisions of the Arizona Courts, the Petitioner believes that it is a violation of due process to review the trial court's decision, only in his case, for an abuse of discretion without the benefit of a trial transcript. To rely upon the facts provided by the State only makes the due process violation even worse. More importantly, the Court of Appeals assumed facts that were completely

contrary to the direct evidence at trial. However, even the facts that the Arizona Court of Appeals relied upon do not support their conclusion that the trial judge abused his discretion in this case.

The only facts alleged in the State's brief are that the Petitioner was the attorney for Ramon Carrasco who had been charged with sexual abuse in an unrelated matter. On May 20, 1998, Petitioner telephoned the shelter home and told the shelter worker that Petitioner was the attorney of an alleged victim, Rebecca. Petitioner stated that he wanted to speak with Rebecca. The shelter worker allowed Petitioner to do so because of the assertion that Petitioner was Rebecca's attorney. During the ensuing conversation, Petitioner instructed Rebecca not to speak to the police. The Court of Appeals rendered its decision based upon these facts, and the Supreme Court of Arizona denied the Petitioner's petition for review.

The facts provided by the State were essentially correct, but the facts provided by the State leave out critical events that occurred in this case. Additionally, not all of the facts the State provided within its brief could be supported by the evidence produced at trial. To prevent repeating the Arizona Court of Appeal's error, the Petitioner has provided this Court with excerpts of the trial testimony of relevant witnesses in the Appendix. The following facts are produced from testimony of witnesses found within the transcripts from the trial with page cites to the Appendix of this petition.

Petitioner is an attorney who often practices in the field of criminal law and civil rights. Petitioner's cousin, Ramon Carrasco, was charged with molesting

three teenage children who lived in his house; April Colpitts, Fonda Carrasco's daughter by a previous marriage, Rebecca Horlander, also Fonda's daughter by a prior marriage and Desiree Wabich, a minor that stayed with the Carrasco family.

The investigation began on May 15, 1998, when detective Charlton of the Tucson Police Department interviewed April Colpitts and Desiree Wabich with Fonda Carrasco at the Midtown police station. After the detective spoke with the girls for several hours, Fonda Carrasco agreed not to permit the children to have any contact with Ramon Carrasco. Fonda left the interview on May 15th and stayed at a hotel for the weekend. (App. E, p. 24a - p. 26a). After the interview with April and Desiree, detective Charlton interviewed Ramon at his house, and after that interview she began to suspect that Rebecca may have been molested by Ramon. (App. E, p.25a). The next meeting occurred at the Child Protective Services office on May 19, 1998 when detective Foust, detective Charlton, Reynaldo Valenzuela, Rebecca, April, Desiree and Fonda were present; Ramon and the Petitioner arrived later. (App. E, p. 26a - p. 27a). However, during that meeting on the 19th when the Petitioner was present with Ramon, detective Charlton did not tell the Petitioner that she believed Rebecca was a victim. (App. E, p. 30a). During the meeting on the 19th the detectives had a physical confrontation with April when she tried to leave. (App. E, p. 27a - p. 28a, and App. E, p. 32a - p. 34a). It was obvious that the girls had told Petitioner about the incident because detective Charlton was contacted by the Petitioner on May 20th, and the Petitioner told her to stop harassing the

victims. (App. E, p. 28a). Each of the detectives admitted that there was absolutely nothing wrong with a person telling anybody that they do not have to speak with the police. (App. E, p. 30a, and App. E, p. 34a).

Rebecca did not like detective Charlton, and she witnessed the event between the detectives and her sister. (App. F, p. 42a). Rebecca also felt that detective Charlton would change everything that she said to the detective. (App. F, p. 43a - App. F, p. 44a). Rebecca did not remember the Petitioner calling her, she remembered that she called him. Rebecca also did not believe that she was in Child Protective Service's custody for anything that Ramon had done to her. (App. F, p. 43a - App. F, p. 44a). Rebecca testified that on the 20th she and her Uncle Louie talked about how her mother and Ramon were doing, and she wanted to know how her sister was doing because she had heard that her sister had run away. Rebecca did not remember if the Petitioner informed her not to speak to the police. (App. F, p. 45a - App. F, p. 46a and App. F, p. 48a - App. F, p. 49a). Rebecca said that she called her Uncle Louie much more than he called her. (App. F, p. 48a). Rebecca did complain about the abuse she felt she was receiving from Child Protective Services, (App. F, p. 49a) and she also seemed to remember that she told the Petitioner about her complaints against Child Protective Services. (App. F, p. 46a).

Reynaldo Valenzuela knew that very early in the investigation April and Desiree had informed the detectives that they had lied to them. (App. F, p. 36a). The Petitioner had been complaining about the treatment that his family members had received from

the detectives in this case after the girls told them they had lied. (App. F, p. 37a). The girls also complained about the way they were treated by the detectives to Mr. Valenzuela. (App. F, p. 38a). The girls also complained to their mother that they were being abused by the detectives. (App. F, p. 51a - App. F, p. 52a). Fonda also told the girls that they did not have to talk to the police when they asked her. (App. F, p. 53a - App. F, p. 54a). Fonda asked the Petitioner to file a complaint about the abuse the girls claimed they had received from the detectives. (App. F, p. 54a - App. F, p. 55a).

None of the evidence presented at trial supports the State's conclusion that the Petitioner told Rebecca that she did not have to speak to the police during that single call on May 20, 1998. For example, Rebecca did have a conversation with Petitioner while Rebecca was at the shelter home, but she couldn't remember what day she talked to Petitioner. (App. F, p. 46a and App. F, p. 48a). When asked, Rebecca also did not remember being told anything about her rights or that she should not talk to the police. (App. F, p. 48a and App. F, p. 49a).

Rebecca also said that she wanted the Petitioner to be her lawyer. (App. F, p. 49a). Rebecca did testify that she did remember a phone call from Petitioner when the shelter worker asked her if Petitioner was her attorney. Rebecca said that she told the shelter worker that the Petitioner was her attorney because she thought that petitioner was her attorney. She also testified that she would have said Petitioner was her attorney in any case so that she would be able to talk to Petitioner. App. F, p. 50a).

The shelter worker testified at the trial. The

shelter worker said that Petitioner did call the shelter worker seeking to speak with Rebecca on May 20, 1998, and when the shelter worker asked who he was, the Petitioner told the shelter worker that he was Rebecca's attorney. (App. F, p. 40a). However, the evidence produced at trial did not establish that the shelter worker allowed Petitioner to speak with Rebecca because of the assertion that he was her attorney as the facts contained within the State's brief indicate. The shelter worker did testify that she would have allowed the Petitioner to speak with Rebecca if he had said that he was an attorney, not necessarily Rebecca's attorney. (App. F, p. 40a - App. F, p. 41a).

In short, the transcripts from the trial indicate that Petitioner did talk with Rebecca on the phone several times and on different days, and that during one of those conversations with Rebecca he may have told Rebecca that she did not have to speak to the police. The State did prove that Petitioner did call the shelter worker seeking to speak with Rebecca on May 20, 1998, and when the shelter worker asked who he was, the Petitioner told the shelter worker that Petitioner was Rebecca's attorney. The shelter worker also testified that she would have allowed the Petitioner to speak with Rebecca if he had said that he was an attorney. Based upon these facts, the Petitioner was thereafter charged with obstructing justice a violation of Arizona Revised Statute §13-2409.

The Petitioner filed a motion to remand the indictment because the State had drafted the Arizona statute to suit their needs and presented that altered version to the grand jury to obtain a true bill. The

charging document read as follows:

> On or about the 20th day of May, 1998, LOUIE NMN CARRASCO knowingly attempted by means of misrepresentation, to obstruct, delay or prevent the communication of information or testimony relating to the case against RAMON CARRASCO, to a peace officer, magistrate, prosecutor or grand jury, by telling Priscilla Ortiz, a shelter worker having care of Rebecca Horlander, a person whom he knew to be an alleged victim/witness in an ongoing criminal investigation against his then client, Ramon Carrasco, that he was Rebecca's attorney so he could tell Rebecca Horlander that she should not talk to the police or child protective services, in violation of A.R.S §§ 13-2409, 13-603, 13-701, 13-702, 13-702.02, (A) and (B), 13-801, 13-804, and 13-811.

The statute actually reads as follows:

> A person who knowingly attempts by means of bribery, misrepresentation, intimidation or force or threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer, magistrate, prosecutor or grand jury or who knowingly injures another in her person or property on account of the giving by the latter or by any other

person of any such information or testimony to a peace officer, magistrate, prosecutor or grand jury is guilty of a class 5 felony.

The Petitioner argued that the State should not have been allowed to rewrite the statute to their satisfaction and then present the altered version of the statute to the grand jury, nonetheless, the trial judge denied the Petitioner's motion.

The Petitioner also filed a pre-trial motion to dismiss the charges against the Petitioner because the statute the Petitioner was charged with offending was unconstitutionally vague and overbroad since the statute proscribes speech protected by the First Amendment to the United States Constitution. The State argued that the Petitioner had no standing because his conduct fell squarely within the purview of the statutes he was charged with offending, and there was no infringement upon legal speech. The trial court denied the Petitioner's motion.

At the close of the State's case the Petitioner moved for a directed verdict, and the hindering prosecution charge was dismissed. The trial court denied Petitioner's motion for directed verdict as to the obstructing justice charge. The jury returned a verdict of guilty of obstructing justice, then the Petitioner then filed a motion for acquittal after the guilty verdict. The Petitioner provided several reasons why the trial judge should grant the Petitioner's motion for acquittal despite the guilty verdict. The Petitioner pointed out that the State had failed to establish that the Petitioner misrepresented that he was Rebecca's attorney on the call in question. The Petitioner asked for an acquittal because the State

had failed to establish that the Petitioner told Rebecca that she did not have to talk to the police during the phone call that the shelter worker would not have permitted unless the Petitioner misrepresented that he was Rebecca's attorney. The Petitioner also included his claims that the statute was vague and overbroad as applied to him, and that he could not be prosecuted for his pure protected speech. Finally, the Petitioner also argued that his conduct was not proscribed by Arizona Revised Statute § 13-2904 as limited by the decision in *Walker v. Superior Court in and for County of Navajo*, 919 Ariz. 424, 956 P.2d 1246 (Ariz. App. Div. 1 1998).

The trial court granted the Petitioner's motion for acquittal only as to the application of the *Walker* decision, and denied the motion as to all the other grounds. The Petitioner argued that the *Walker* holding was not limited to its specific facts and established that the State could not connect the alleged misrepresentation to a shelter worker with the truthful statement to a witness to find a violation of this statute. When the trial court granted the motion for acquittal the trial court recognized that the *Walker* decision provided necessary and reasonable limits to the enforcement of Arizona Revised Statute § 13-2409 stating that;

> There is the language in the Walker case we hold that misrepresentation in quotes, in the obstructing statute refers to what the defendant says or does to a prospective informant or witness. And once we have the misrepresentation made to someone other than the prospective informant or witness, then

> we have to concern ourselves with what degree of removal that person occupies to Priscilla Ortiz or to her supervisor or to someone filling in for her.

(App. H, p. 59a).

The State appealed the trial court's decision, and the Arizona Court of Appeals reversed and remanded the trial court's decision. The Petitioner argued that he did not make any misrepresentations to Rebecca, and that his statement to her was entirely accurate. While the Court of Appeals recognized that the Arizona criminal code generally does not prohibit a person from advising another of her rights, the Court of Appeals found that the Petitioner did "misrepresent his role in the investigation to the shelter worker in order to gain access to R." (App. A, p. 5a). The Court of Appeals went on to hold that "§ 13-2409 encompasses the conduct that occurred here–a misrepresentation to a minor child's caregiver, [sic] rather than to a child victim or witness directly, for the purpose of obstructing, delaying, or preventing the victim or witness from communicating relevant information concerning an alleged crime to a peace officer." (App. A, p. 5a). The Court of Appeals also denied all of the Petitioner's claims for constitutional violations. The Court of Appeals recognized that the *State v. Snodgrass*, 117 Ariz. 107, 570 P.2d 1280 (App. 1977) decision did support the Petitioner's claim that a person cannot violate § 13-2409 simply by informing a witness, client, friend, or any other person that she did not have to speak with the police. (App. A, p. 9a). Yet, the Court of Appeals held that § 13-2409 does not unconstitutionally prohibit speech because "a person does violate the statute by

knowingly making a misrepresentation to the caregiver [sic] of a minor child victim or witness, as Carrasco did here, to hinder a criminal investigation or prosecution. Accordingly, § 13-2409 does not unconstitutionally prohibit protected speech." (App. A, p. 9a). The Petitioner then filed a Petition for Review with the Arizona Supreme Court and the Arizona Supreme Court denied the Petitioner's request for review on May 23, 2002 without comment.

STAGE AT WHICH THE FEDERAL QUESTIONS WERE RAISED

The Petitioner first raised the question as to whether his conduct was proscribed by the Arizona Revised Statute § 13-2409 in his motion to remand. The Petitioner argued that the State had violated the his right to substantive due process by not providing the grand jury with the fact that Rebecca thought the Petitioner was her attorney and that she wanted him to be her attorney. The State argued that it was impossible for the Petitioner to be Rebecca's attorney and the attorney for Ramon at the same time, and that the State had done nothing improper. The trial court denied the Petitioner's motion without comment. The Petitioner filed a special action with the Arizona Court of Appeals and that court declined to accept jurisdiction. The Petitioner filed a petition for review with the Supreme Court of Arizona and sought a stay. The Supreme Court of Arizona granted the Petitioner's request for a stay, but after considering the petition the Supreme Court also declined to accept jurisdiction.

The Petitioner first raised his claim that the statute the Petitioner was charged with offending was

unconstitutionally vague and overbroad since the statute proscribed speech protected by the First Amendment to the United States Constitution in his motion to dismiss. (App. C, p. 14a). The State argued that the Petitioner did not have standing to argue vagueness because his conduct was clearly prohibited by the plain wording of the statute, that the statute was not vague nor overbroad and that the Petitioner's conduct was highly unethical. The trial court denied the Petitioner's motion without comment.

The Petitioner again raised his First Amendment claims in his motion for acquittal after the verdict, and the trial judge denied those claims and granted the motion only as to the application of the *Walker* decision. (App. H, p. 59a, and App. H, p. 60a). The First Amendment claims were again raised with the Arizona Court of appeals as an alternative means for the Court of Appeals to affirm the judgment of the trial court. The Court considered the Petitioner's claims and reversed the decision of the trial court. (App. A, p. 3a).

REASONS FOR GRANTING REVIEW

This Court should grant certiorari because the Petitioner's conduct was never intended to be prohibited by this statute. The Petitioner's Arizona conviction is completely repugnant to the First Amendment to the United States Constitution, and the Arizona Court of Appeal's decision in this case permits a penal statute to have sweeping and improper application in the area of First Amendment freedoms. The definition of this statute encompasses a large amount of protected speech within its purview and it is the Court's duty to apply the statute in such

a manner so as to restrict as little speech as possible while still accomplishing the goal of the statute It is the duty of this Court to insure that all the rights guaranteed to every citizen of this great country remain intact and protected from governmental encroachment. The First Amendment protections remain a cornerstone of our free society that should be zealously guarded if our society is to remain free. The right of the people to express themselves is a fundamental right that simply cannot be abridged.

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

Board of Education v. Barnette, 319 U.S. 624, at 643 (1943).

If this Court will not reverse the Petitioner's Arizona conviction the Petitioner will be deprived of his liberty without due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. The fundamental concept of liberty manifested within the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U.S. 296 (1940), *Stromberg v. California*, 283 U.S. 359 (1931). The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact any law that abridges any citizen's right to free speech. *Cantwell v. Connecticut*, 310 U.S. 296

(1940). In order to protect every citizen's constitutional rights a state law cannot be permitted to abridge any freedom that the Unites States Constitution protects.

> So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

Marbury v. Madison, 1 Cranch 137, 178 (1803).

The decision of the Court of Appeals should be reversed because the Petitioner's conduct was never intended by the legislature to be criminalized. The State was permitted to combine two completely separate acts in a fashion that was never the intent of the legislature. The evidence produced at the trial completely failed to establish that the Petitioner had any improper motive for his speech.

The Court of Appeals decision should be reversed and the trial court's acquittal should be affirmed by this Court because the Court of Appeals made a decision without the benefit of a transcript and that transcript does not support the conclusions made by the Court of Appeals. For example, the Court of Appeals found that it was a violation of Arizona Revised Statute § 13-2409 to "misrepresent his role in the investigation to the shelter worker in order to gain access to R." (App. A, p. 5a). It is

simply not a violation of Arizona Revised Statute § 13-2409 to lie to a shelter worker "in order to gain access" to anybody. Lying to gain access to a witness is simply not prohibited by the statute as drafted by the legislature.

The State argued that the Petitioner could not have been Rebecca's attorney because he was the attorney for the defendant, Ramon. Other than the State's implication, the transcript indicates that Rebecca testified that the Petitioner was her attorney, and that she wanted him to be her attorney, and there was simply was no misrepresentation when the Petitioner told the shelter worker that he was Rebecca's attorney. Even more importantly, there is nothing wrong or improper about an attorney contacting any witness. Every good attorney wants to interview every witness who has relevant information about the event in question as soon as possible, in fact, it has been held to be ineffective assistance of counsel to fail to conduct witness interviews.

Despite the sparse set of facts before the Court of Appeals, that Court also concluded that the Petitioner "could not possibly have had any other intention in advising R. that she did not have to talk to the police other than to discourage her from cooperating with the police in the investigation of R.'s own victimization." (App. A, p. 6a). If the Court of Appeals would have had the benefit of a transcript they would have known that there were many other reasons why the Petitioner might be seeking to contact Rebecca, and why he may have told Rebecca that she did not have to speak to the police. For example, Rebecca had complained to the Petitioner that she did not like the detective and that detective

Charlton turned around everything she said. It would only follow that in response to that type of statement, Petitioner may have told Rebecca that she did not have to speak to the police.

The evidence presented at trial never established that the Petitioner lied to the shelter worker. Rebecca wanted the Petitioner to be her attorney for her complaints of abuse at the hands of Child Protective Services. Even if the Petitioner did lie to the shelter worker that is not sufficient to support a conviction for obstructing justice. Lying to a shelter worker in order to gain access to Rebecca does not violate Arizona Revised Statute § 13-2409. The Arizona Court of Appeals would permit the Petitioner to be convicted of obstructing justice based upon his assertion to a shelter worker that he was Rebecca's attorney, (the misrepresentation) and when he was permitted to speak with Rebecca he told her she did not have to speak with the police (the obstructing). The Arizona Statute certainly should not be applied to the Petitioner in this fashion.

The Arizona obstructing justice statute is derived from federal law, and the Arizona statute is worded nearly identically to the federal statute. *Walker v. Superior Court in and for County of Navajo*, 1919 Ariz. 424, 956 P.2d 1246 (Ariz. App. Div. 1 1998). The offense of obstructing justice is a broadly worded statute that does cover a great variety of conduct, and one could violate that statute with words alone. *State v. Snodgrass*, 117 Ariz. 107, 570 P.2d 1280 (1977). For example, one could tell the shelter worker that the trial was canceled, when it was not, thus preventing the information that the ward knew from being presented to the court. This

statute was never intended to prevent lying to gain access to a witness nor informing an individual that she did not have to speak to the police. The statute was certainly never designed to connect the two separate events to result in a violation of the statute as the Court of Appeals would permit here.

The obstructing justice statute was enacted to deter the coercion of potential informants or witnesses by the subjects of criminal investigations prior to the institution of judicial proceedings. *United States v. Williams*, 874 F.2d 968 (5th Cir. 1989). The statute is designed to keep the communication of information to a criminal investigator unobstructed, and it is aimed at deterring interference with future communication of information to investigators.

United States v. Williams, 874 F.2d 968, at (5th Cir. 1989)

Likewise the Arizona statute is also designed to prevent only those communications that are uttered to obstruct or delay information to police officers or investigators.

> Our Legislature has clearly indicated that for communication to be criminal it must be (1) willful, and (2) uttered to obstruct, delay or prevent the communication of information or testimony relating to the violation of a criminal statute to a police officer, A.R.S. § 13-541.01(A), or be accompanied by an act that frustrates the apprehension, prosecution or conviction of another person for a felony. A.R.S. § 13-541.01(B).

State v. Snodgrass, 117 Ariz. 107, at 114, 570 P.2d

1280, at 1287 (1997). However, the criminal statute must be scrutinized with particular care, and those statutes that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have a legitimate application. *Houston v. Hill*, 482 U.S. 451, at 459 (1987).

The accused must act with the intent to influence judicial or grand jury proceedings; it is not enough that there be an intent to influence some investigation independent of the court's or grand jury's authority. *United States v. Aguilar*, 515 U.S. 593, at 599 (1995). The "endeavor must have the 'natural and probable effect' of interfering with the due administration of justice." *Aguilar*, at 599. This has been described as the "nexus" requirement. The Court in *Aguilar* held that the "nexus" requirement developed by the decisions of the Courts of Appeals was a correct construction of section 1503. "We do not believe that uttering false statements to an investigating agent – and that seems to be all that was proved here – who might or might not testify before the grand jury is sufficient to make out a violation of the catchall provision of § 1503." *Aguilar*, at 600. The best that the State of Arizona can prove in the case at bar is that the Petitioner lied to the shelter worker, and if there was a lie, it was only uttered in order to gain access to Rebecca. It was not a misrepresentation to tell Rebecca that she did not have to speak with the police.

The Arizona statute also has a "nexus" requirement. The Arizona Statute makes it unlawful for a person who knowingly attempts by means of misrepresentation to obstruct, delay or prevent the

communication of information or testimony relating to a violation of any criminal statute to a peace officer. In other words, the obstruction must be accomplished "by means of" a misrepresentation. The Court of Appeals correctly noted that the legislature in enacting Arizona Revised Statutes §13-2409 intended to criminalize knowingly attempting to prevent information regarding a crime from being revealed to law enforcement by means of a misrepresentation. However, The Court of Appeals failed to give the language of each provision of this statute its clear and unambiguous meaning. A plain reading of this statute indicates that law enforcement must be prevented from obtaining the information **by means of** a misrepresentation. In other words, the misrepresentation must be what causes the information regarding a crime from getting to law enforcement. If there was a misrepresentation in this case, the Court of Appeals admits that it was done to gain access to the witness, and that act by itself is certainly not likely to prevent any information from reaching the police. If there was a misrepresentation in this case, there is simply no "nexus" to the obstructing, delaying or preventing of information from getting to a police officer.

While the State of Arizona has a legitimate interest in preventing individuals from obstructing justice, this Petitioner's conviction cannot stand because A.R.S. § 13-2904 as applied to the Petitioner is completely repugnant to the First Amendment to the United States Constitution. Because the Petitioner was convicted for merely uttering certain words, the Petitioner in the case at bar has been prosecuted for obstructing justice in Arizona much

like Jesse Cantwell was prosecuted for inciting a breach of the peace in Connecticut when he played his record that condemned the Catholic church in *Cantwell v. Connecticut*, 310 U.S. 296 (1940). The Arizona Court of Appeals would permit the Petitioner to be convicted of obstructing justice based upon his assertion to a shelter worker that he was Rebecca's attorney, (the misrepresentation) and when he was permitted to speak with Rebecca he told her she did not have to speak with the police (the obstructing).

The trial judge was completely correct when he recognized that once the misrepresentation can be made to someone other than the prospective informant or witness there are no limits to whom those people can be. A husband could be convicted under this interpretation if he lied to his wife about why he was going out that night, and while he was out that night he told his girlfriend that no one could force her to speak with the police. How was the Petitioner to know that Rebecca would ask him whether she had to speak with the police, even if he did lie to gain access to Rebecca?

The decision as to lawfulness of Cantwell's conviction required the weighing of two conflicting interests, exactly like the case at bar.

> Decision as to the lawfulness of the conviction demands the weighing of two conflicting interests. The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged. The State of Connecticut has an obvious interest in

> the preservation and protection of peace and good order within her borders. We must determine whether the alleged protection of the State's interest, means to which end would, in the absence of limitation by the Federal Constitution, lie wholly within the State's discretion, has been pressed, in this instance, to a point where it has come into fatal collision with the overriding interest protected by the federal compact.

Cantwell, at 307.

The Petitioner does not suggest that the State of Arizona does not have an obvious interest in preventing individuals from obstructing justice. The Petitioner maintains that the protection of the State's interest in preventing individuals from obstructing justice has been pressed in this instance to a point where it has come into a fatal collision with the Petitioner's overriding interest in freedom of speech which is protected by the First Amendment to the United States Constitution. The Petitioner maintains that even if he did exactly as the State suggests, his conduct simply does not fall within the purview of the Arizona statute, and the State of Arizona cannot be permitted to infringe upon his right to free speech in this manner.

Informing an individual that they do not have to talk to the police is a completely lawful activity, and it is pure speculation whether that statement would have prevented any information from reaching an investigator. Any person who received such advice from an attorney would be free to speak to the police regardless of the advice she had been given. Further,

there was no evidence in this case that the attorney knew that Rebecca possessed any information concerning the events that the police were investigating. The evidence only suggests that Rebecca asked her Uncle Louie if she had to speak to the police, and the attorney correctly informed her that she did not have to speak to the police.

The entire decision of the Court of Appeals is premised upon the idea that the Petitioner should not have sought to speak with Rebecca. The Court of Appeals incorrectly noted Petitioner was prohibited from directly contacting Rebecca, because Arizona Revised Statute § 13-4433 provides that the defendant's attorney shall only initiate contact with the victim through the prosecutor's office. The Court of Appeals made this notation despite the fact that § 13-4433 was never mentioned by either party. First, the case was only in the investigation stage at that time and there was no prosecutor to contact at that time. Second, the Petitioner did not know that Rebecca was a victim since the detective did not tell the attorney that she considered Rebecca a victim. Finally, that statute has no application to this case because there was plenty of evidence that Rebecca wanted to speak with the Petitioner. Even if § 13-4433 did apply, that statute requires that once the defense attorney contacts the prosecutor and informs the prosecutor that he wants to interview the victim, the prosecutor is obligated to ask the victim if they want to speak with the defense attorney, and permit the victim to speak with the defense attorney if they wish. In this case there was plenty of evidence to suggest that, if asked, Rebecca would have said that she wanted to speak with her Uncle Louie. The

shelter worker had no business keeping Rebecca from talking with her Uncle Louie in the first instance. There is absolutely nothing wrong or improper with an attorney seeking to talk to possible witnesses of a relevant event.

The Petitioner's conduct in this case is nothing like the conduct of other attorneys who have been convicted of obstructing justice. The evidence presented at trial in this case does not establish any corrupt or ulterior motive on the part of Petitioner. The Court of Appeals reversed the decision of the trial court because Petitioner lied to gain access to Rebecca, and then that Court concluded, contrary to the evidence actually presented at trial, that the Petitioner "could not possibly have had any other intention in advising Rebecca that she did not have to talk to the police other than to discourage her from cooperating with the police in the investigation of Rebecca's own victimization." (App. A, p. 6a).

In *Cole v. United States*, 329 F.2d 437 (9th Cir. 1964), *cert denied*, 377 U.S. 954, 12 L.Ed.2d 497, 84 S.Ct 1630 (1964), Mr. Cole advised his friend and former employee to take the fifth before the grand jury which was investigating Joseph Stacher, and there was plenty of evidence that he did this to prevent the grand jury from discovering his own nefarious relationship with Mr. Stacher.

In *United States v. Cioffi*, 493 F.2d 1111 (2nd Cir. 1974) Mr. Cioffi, among other acts, had advised Mr. Scheer to take the fifth before the grand jury or go to meet with the loan shark and become fortified prior to testifying before the grand jury. There was ample evidence that Mr. Cioffi was the right hand man of the loan shark.

In *United States v. Cintolo*, 818 F.2d 980 (1st Cir. 1987) Mr. Cintolo was actually working for his friend the loan shark while he was representing Mr. LaFreniere who Mr. Cintolo had instructed to take the fifth before the grand jury. His client did refuse to testify before the grand jury even after he had been given immunity.

In *United States v. Cueto*, 151 F.3d 620 (7th Cir. 1998) Mr. Cueto was convicted of obstructing justice for, among other things, helping his business partner file frivolous suits against the undercover agent who was investigating his partner for illegal gambling.

In each of these cases there was plenty of evidence of improper motive and improper conduct. The actions in these cases stands in sharp contrast to the action of the Petitioner in the case at bar. The Petitioner told Rebecca that she did not have to speak with the police and the trial transcripts provide many reasons why he would have told Rebecca that she did not have to speak with the police. Also, there was no evidence that any judicial proceedings had been commenced at that time, and the investigation had just begun a few days earlier.

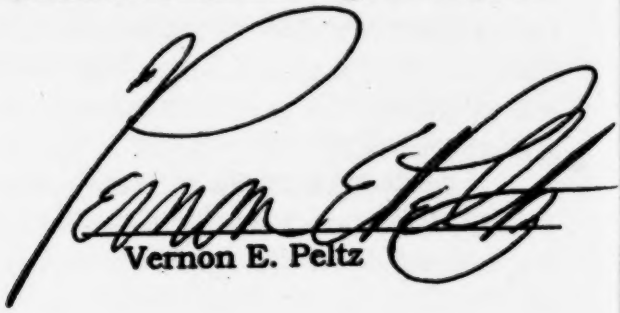
Finally, if the *Walker* decision does not apply in this case there is nothing to prevent discriminatory enforcement of this statute. *Walker* is a reasonable limiting of Arizona Revised Statute § 13-2409 and without that limit there are endless amounts of innocent conduct that will be swept within the purview of this statute. There is no doubt that this Petitioner's has been convicted for his innocent conduct.

CONCLUSION

The petition for a writ of certiorari should be

granted.

Respectfully submitted this 21st day of August, 2002.



Vernon E. Peltz

APPENDIX A

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Appellant,	)	2 CA-CR- 00-0337
	)	Department A
V.	)	
	)	
LOUIE CARRASCO,	)	
	)	
Appellee.	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-64234

Honorable Richard Nichols, Judge

REVERSED AND REMANDED

(Filed October 30, 2001)

Before: M. Jan Florez, J. William Brammer, Jr., and John Pelander

F L 0 R E Z, Judge.

Appellant State of Arizona challenges the trial court's grant of appellee Louie Carrasco's renewed

motion for judgment of acquittal after a jury found Carrasco guilty of obstructing a criminal investigation or prosecution. We view the facts in the light most favorable to upholding the jury's verdict, and we review the trial court's grant of Carrasco's renewed motion for judgment of acquittal for an abuse of discretion. *See State ex rel. Hyder v. Superior Court*, 128 Ariz. 216, 624 P.2d 1264 (1981). Finding such abuse here, we reverse.

Although the state failed to see that we were provided with complete transcripts of Carrasco's trial, Carrasco conceded in his answering brief that "(t]he [s]tate's version of the case presented at trial [as described in its opening brief] is essentially correct. " Accordingly, we accept the following as uncontested facts.[1] *See Brousseau v. Fitzgerald*, 138 Ariz. 453,

---

[1] At oral argument, Carrasco argued that the absence of complete trial transcripts requires us to assume that the record supported the trial court's decision to grant Carrasco's renewed motion for judgment of acquittal. "'While it is true that the court may not consider questions ... of fact, in the absence of a transcript the court must consider questions of law which are raised by the record transmitted to the court.'" *Brousseau v. Fitzgerald*, 138 Ariz. 453, 457, 675 P.2d 713, 717 (1984), quoting Hall v. Bowman, 88 Ariz. 409, 412, 357 P.2d 149, 151 (1960). The absence of transcripts on appeal does not require us to assume the record supports the trial court's ruling here because, as will be developed more fully, the true issue on appeal is a question of law: whether, in the trial court's words, "a misrepresentation to a third party rather than a potential informant" violates A.R.S. • 13-2409.

675 P.2d 713 (1984) (adopting facts agreed upon in briefs where no record of trial court proceedings available). While representing his cousin who had been charged with sexually abusing his two minor stepdaughters, and another fifteen-year-old female, Carrasco, an attorney, telephoned the shelter where Child Protective Services had placed the girls. Carrasco told one of the shelter workers that he was the victims' attorney, and that he wanted to speak with R., the younger of his cousin's stepdaughters. The shelter worker stated that, absent Carrasco's misrepresentation, she would not have allowed him to speak with R. During his subsequent conversation with R., Carrasco informed her that she did not have to speak with the police investigators. In his answering brief, Carrasco states that after that conversation, R. told the investigators that "[U]ncle Louie [had] told her she did not have to talk to the police."

Carrasco was charged with obstructing a criminal investigation or prosecution in violation of A.R.S. § 13-2409, a class five felony. After the jury found Carrasco guilty of the charge but before he was sentenced, Carrasco renewed the motion for judgment of acquittal he had filed prior to the close of trial. The trial court rejected five of the arguments Carrasco made in support of his motion, but it agreed with Carrasco that "a misrepresentation to a third party rather than a potential informant does not [fall within the ambit of] A.R.S. [§] 13-2409," and granted Carrasco's motion for judgment of acquittal. This

appeal followed.[2]

Application of § 13-2409

The state contends that "[t]he trial court erroneously held that A.R.S. ° 13-2409 requires proof that the misrepresentation was made directly to the child victim." We review de novo the trial court's interpretation of a statute. See *In re $3,636.24 U.S. Currency*, 198 Ariz.504, 11 P.3d 1043 (App. 2000). "If the language of a statute is clear and unambiguous, this court must give it effect. In doing so, 'we must read the statute as a whole and give meaningfull operation to each of its provisions." Id. at 110 (citation omitted), quoting *Ruiz v. Hull*, 191 Ariz. 441, 135, 957 P.2d 984, 135 (1998).

15 Section 13-2409 provides that a person is guilty of obstructing a criminal investigation or prosecution if he or she ."knowingly attempts by means of bribery, misrepresentation, intimidation or force or threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer." Carrasco argues that he did not make any misrepresentations to R. because his statement to her that she was not required to talk to police was entirely accurate. Our criminal code generally does

---

[2] The state withdrew its procedural challenge to the trial court's grant of Carrasco's renewed motion for judgment of acquittal during oral argument before this court.

not prohibit a person from advising another of his or her rights. *See State v. Snodgrass*, 117 Ariz. 107, 570 P.2d 1280 (App. 1977). However, Carrasco did misrepresent his role in the investigation to the shelter worker in order to gain access to R. We hold that § 13-2409 encompasses the conduct that occurred here--a misrepresentation to a minor child's caregiver, rather than to a child victim or witness directly, for the purpose of obstructing, delaying, or preventing the victim or witness from communicating relevant information concerning an alleged crime to a peace officer.

The trial court construed § 13-2409 narrowly, so as to require that any misrepresentation be made to a victim or witness directly. But as the state points out, § 13-2409 does not, on its face, contain such a requirement. We construe our criminal statutes "according to the fair meaning of their terms to promote justice and effect the objects of law." A.R. S. § 13-104. From the broad language of the statute, we can infer the legislature intended to prohibit anyone from utilizing misrepresentation to attempt to interfere with a criminal investigation or prosecution by preventing or delaying a witness's communication of information to the police. See A.R.S. § 13-101(l) (our criminal code seeks "[t]o proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to ... public interests"); *cf. State v. Terrell*, 168 Ariz. 112, 114, 811 P.2d 364, 366 (App. 1991),(acknowledging that "[t1he state has a legitimate interest in facilitating the law enforcement process by discouraging individuals . . . from knowingly providing information that will confound the functioning of the justice system," in upholding

constitutionality of statute prohibiting false reporting to law enforcement). In his role as attorney for his cousin, the accused, Carrasco could not possibly have had any other intention in advising R. that she did not have to talk to the police other am to discourage her from cooperating with the police in the investigation of R.'s own victimization. Carrasco violated § 13- 2904 when he lied to the shelter worker for the purpose of thwarting this investigation.[3]

Moreover, we disagree with Carrasco that in *Walker v. Superior Court*, 191 Ariz. 424, 956 P.2d 1246 (App. 1998), which the trial court relied on in granting Carrasco's renewed motion for judgment of acquittal, Division One made "it clear that ... a 'misrepresentation' . . .must be made to a prospective informant or witness." In that case, the defendant had given police a false name and social security number during a traffic stop. The state prosecuted him under § 13-2409. In granting the defendant special action relief by remanding the obstructing a criminal investigation count against the defendant to the grand jury, Division One held that " misrepresentation' in the obstruction statute refers to what defendant says or does to a prospective informant or witness; it does not refer to what defendant says or does to an officer who is investigating defendant." *Id.* at 112. The court explained that "the obstruction statute is inapplicable

---

[3] Furthermore, we note that Carrasco was prohibited from directly contacting R. by A.R. S. § 13-4433(B) which states: "The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the prosecutor's office."

to the facts of this case because that statute requires three people: a defendant, an officer ... and another (a prospective informant or witness). This case has no 'another.'" *Id.* at 15.

Factually, *Walker* is entirely distinguishable. There, the defendant had "made a misrepresentation about himself during an investigation of himself. " *Id.* at 118. Here, in contrast, Carrasco was not trying to thwart an investigation into his own wrongdoing by giving false information directly to the police. Moreover, the court in *Walker* never considered whether "another" may also include a third person to whom a defendant has made a misrepresentation in order to prevent a victim or witness from aiding a police investigation.

Additionally, Carrasco concedes that *Walker* "neither states nor implies that a bribe[,]" one of the other means by which a person could violate § 13-2409, "would have to be made to a potential informant or witness" before a person could be charged with obstructing a criminal investigation or prosecution. We see no distinction between the legislature's treatment of bribery and its treatment of misrepresentation in the plain language of § 13-2409. As we have previously explained, our interpretation of § 13-2409 promotes the statute's goal of prohibiting people from using misrepresentation to hinder the police's ability to communicate with witnesses. Because Carrasco violated § 13-2409 by misrepresenting his identity to the shelter worker for the purpose of gaining access to R. to advise her or her right not to speak with the police, we conclude that the trial court abused its discretion in granting Carrasco's motion for judgment of acquittal. *See State*

ex rel. Hyder.

Constitutionality of § 13-2409

In his answering brief, Carrasco contends that we may affirm the trial court's order on the alternative ground that § 13-2409 is unconstitutional because it unlawfully restricted his freedom of speech and it is vague and overbroad as applied to him. *See State v. Perez*, 141 Ariz.459, 687 P.2d 1214 (1984). The trial court rejected Carrasco's constitutional challenges, and we review its ruling de novo. *See State v. Taylor*, 196 Ariz. 584, 2 P.3d 674 (App. 1999). We presume that § 13-2409 is constitutional, and Carrasco has the burden of overcoming this presumption. See *State v. Bonnewell*, 196 Ariz. 592, 2 P.3d 682 (App. 1999). Carrasco has not met his burden.

Restriction on Carrasco's Freedom of Speech

Relying on the First Amendment and article II, § 6, of the Arizona Constitution, Carrasco argues that he "was being prosecuted for pure speech," which "is protected except for a few exceptions, such as ... false or fraudulent speech or perjury." *See Terrell*, 168 Ariz. at 113-14, 811 P.2d at 365-66 ("'The Constitution affords necessary 'breathing space'by protecting erroneous statements honestly made, but it does not protect knowingly false statements or false statements made with reckless disregard of the truth.'"), *quoting Gates v. City of Dallas*, 729 F.2d 343, 346 (5th Cir. 1984). By definition, the term "misrepresentation" means the "concealment of what is true as well as the assertion of what is false." *State v. Coddington*, 135

Ariz. 480, 48 1, 662 P.2d 155, 156 (App. 1983). Misrepresentation is false speech; in common parlance, lying.

Carrasco contends that he was prosecuted "simply because he told [R.] that she need not speak with the police." He was prosecuted, however, for violating § 13-2409 by lying to another in order to gain access to R., so that he could then advise her that she did not have to talk to the police. Carrasco is correct that a person would not violate § 13-2409 simply by informing a "witness, client, friend, or any other person" that he or she did not have to speak with the police. *See Snodgrass.* But a person does violate the statute by knowingly making a misrepresentation to the caregiver of a minor child victim or witness, as Carrasco did here, to hinder a criminal investigation or prosecution. Accordingly, § 13-2409 does not unconstitutionally prohibit protected speech.

Vagueness

Carrasco argues that § 13-2409 is vague because "this application of the statute criminalize[s] protected speech." "A statute is unconstitutionally vague if it does not provide persons of ordinary intelligence reasonable notice of prohibited behavior and. if it 'fails to provide explicit standards for those who apply it,' allowing for arbitrary and discriminatory enforcement." *State v. Anderson,* 199 Ariz. 187, 115, 16 P.3d 214, 115 (App. 2000), *quoting State v. Tocco,* 156 Ariz. 116, 118, 750 P.2d 874, 876 (1988). Carrasco's vagueness argument rests on his

assertion that his conduct purportedly amounted to protected speech. As previously explained, a false statement is not protected speech in this context. *See Terrell.* Because the statute clearly describes the conduct it proscribes, we conclude that a person of reasonable intelligence has reasonable notice of the circumstances under which it applies. *See Anderson.*

Overbreadth

Carrasco also argues that § 13-2409 is overbroad because "this application of the statute deter[s] privileged activity. A statute is unconstitutionally overbroad when it prohibits or deters conduct protected by the First Amendment. *State v. Weinstein*, 182 Ariz. 564, 898 P.2d 513 (App. 1995). Carrasco argues that under our interpretation of ° 13-2409, "[a]ll attorneys will be deterred from advising their clients that they are not required to speak with the police, as will other laypersons." Again, the basis of the charge against Carrasco was not strictly his statements to R. that she did not have to talk to police; he was prosecuted only because he made his otherwise permissible statements to R. in conjunction with his lie to the shelter worker, who then (and only because of Carrasco's misrepresentation) permitted him access to R., the victim. Given the plain language of § 13-2409, attorneys will not be deterred from giving clients advice, but attorneys are, and should be, accountable for false statements they make in order to accomplish the illegal objective of obstructing a criminal investigation or prosecution. Because, as we have already noted, the statute is not violated unless and

until a person makes a misrepresentation or commits other conduct specified in the statute, we conclude that the statute is not overbroad.

We reverse the trial court's grant of Carrasco's motion for judgment of acquittal, reinstate the jury's verdict, and remand for sentencing. Additionally, we instruct the clerk of this court to forward a copy of this opinion to the disciplinary department of the State Bar of Arizona.

M. FLOREZ, Judge CONCURRING:

J. WILLIAM BRAMMER, JR. Presiding Judge

JOHN PELANDER, Judge

APPENDIX B

Supreme Court

STATE OF ARIZONA

May 23, 2002

RE: **STATE OF ARIZONA vs LOUIE CARRASCO**
Arizona Supreme Court No. CR-01-0469-PR
Court of Appeals Division Two No. 2 CA-CR 00-0337
Pima County Superior Court No. CR-64234

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 21, 2002, in regard to the above-referenced cause:

ORDERED:
Petition for Review to Supreme Court of Arizona DENIED.

Record returned to the Court of Appeals, Division Two, Tucson, this 23rd day of May, 2002.

Noel K Dessaint, Clerk

TO: Hon. Janet A Napolitano, Arizona Attorney General Attn: Randall M Howe, Chief Counsel Barbara LaWall, Pima County Attorney Attn: Elizabeth Hurley, Esq.; Liliana Ortega, Esq.; Amy S Pignatella-Cain, Esq. and Lewis A Brandes, Esq.

Vernon E Peltz, Esq. Amy M Samberg, Esq.,
O'Connor Cavanagh Molloy Jones, Stone Office Jeffrey
P Handler, Clerk, Court of Appeals,
Division Two, Tucson Lexis-Nexis West Publishing
Company

APPENDIX C

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,	)	NO. CR-64234
	)	
Plaintiff,	)	MOTION TO
v.	)	DISMISS
	)	
LOUIE CARRASCO,	)	
	)	
Defendant.	)	

COMES NOW, the Defendant, Louie Carrasco, by and through his attorney undersigned and hereby moves the Court to dismiss the charges against the Defendant because the statutes he is charged with offending are unconstitutionally vague and overbroad because the statutes proscribe speech protected by the First Amendment to the United States Constitution and article II, section 6 of the Arizona Constitution. The Defendant's position is more fully set forth in the attached Memorandum of Points and Authorities.

Respectfully submitted this 26th day of January, 2000

MEMORANDUM OF POINTS AND AUTHORITIES

The charges against the defendant should be dismissed because the statutes he is charged with offending are unconstitutionally vague and overbroad since the statutes proscribe speech protected by the

First Amendment to the United States Constitution and article II, section 6 of the Arizona Constitution. If the statutes in question are not vague nor overbroad, the charge against this defendant must be dismissed because the statutes as applied to this defendant censors his speech. The defendant is being punished for what he said, in violation of United States Constitution and article II, section 6 of the Arizona Constitution.

Mr Carrasco was charged with violation of A.R.S. §13-2409. The charging document read as follows:

On or about the 20th day of May, 1998, LOUIE NMN CARRASCO knowingly attempted by means of misrepresentation, to obstruct, delay or prevent the communication of information or testimony relating to the case against Ramon Carrasco, to a peace officer, magistrate, prosecutor or grand jury, by telling Priscilla Ortiz, a shelter worker having care of Rebecca Horlander, a person whom he knew to be an alleged victim/witness in an ongoing criminal investigation against his then client, Ramon Carrasco, that he was Rebecca's attorney so he could tell Rebecca Horlander that she should not talk to the police or child protective services, in violation of A.R.S. §§ 13-2409, 13-603, 13-701, 13-702, 13-702.02 (A) and (B), 13-801, 13-804 and 13-811. (Emphasis Added)

Mr. Carrasco is charged with a violation of this statute because of what he allegedly said, in other words, he is being criminally prosecuted for his pure speech. Informing any person that they do not have to speak to the police is pure speech. The First Amendment, mandates that all pure speech is

protected except for a few exceptions, such as slander, libel, obscenities, threats or intimidation, speech designed to incite a riot, to bring about a commission of a criminal act, false or fraudulent speech or perjury. The State has not alleged any facts in their charging document nor subsequent disclosures that indicate Mr. Carrasco's telling Rebecca Horlander that she did not have to speak to the police fell into any of these exceptions.

Mr. Carrasco has been charged and is actively being prosecuted solely for what he said, in violation of the Defendant's First Amendment protection. None of the exceptions apply in this case. Many lawyers have told their clients at one time or another that they do not have to speak to the police. Informing persons that they have constitutional rights and that one of those rights means that they do not have to speak to the police is pure speech protected by the First Amendment. The very fact that Mr. Carrasco is now charged with a violation of this section simply because he told Rebecca Horlander that she need not speak with the police is a clear indication that the statute can and will prohibit pure speech.

In Appeal in Maricopa County, Juvenile Action NO. JT9065297, Matter of, 181 Ariz. 69, 887 P.2d 599 (Ariz. App. Div. 1 1994) the court stated that:

A litigant may assert the facial overbreadth or vagueness of an ordinance even though his or her conduct is not constitutionally protected and clearly falls within the scope of the ordinance. *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 60, 96 S.Ct. 2440, 2447, 49 L.Ed.2d 310 (1976) (vagueness) *Franzi v. Superior Court*, 139 Ariz. 556, 563, 679 P.2d 1043, 1050 (1984) (overbreadth) *Steiger*, 162 Ariz. at

144, 781 P.2d at 622 (vagueness). This exception reflects the concern that "the very existence of some statutes may cause persons not before the Court to refrain from engaging in constitutionally protected speech or expression.

In the instant case Mr. Carrasco's conduct is constitutionally protected because his conduct was pure speech that does not fall within any of the listed exceptions. Even if his conduct does fall within the scope of the ordinance, the ordinance must fail if it can be used to criminalize pure speech. A.R.S. § 13-2409 is overbroad and vague, in that the statute criminalizes protected speech, and the statute deters privileged activity.

A statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited, or if it is drafted in such a manner that permits arbitrary and discriminatory enforcement. *State v. Steiger*, 162 Ariz. 138, at 141, 781 P.2d 616, at 619 (App.1989). This statute is vague because the words, "delay or prevent the communication of information or testimony," do not give notice to anyone as to specifically what kind of communication is prohibited, nor what type of information cannot be delayed or prevented. It would appear that the statue prevents the communication of any information, obviously including pure speech within its prohibition. The statute must fail if an attorney can be arbitrarily prosecuted for telling a person that they do not have to speak to the police.

Furthermore. the statute will "sweep within its ambit protected speech or expression of other persons not before the court. All attorneys will be deterred from advising their clients that they do not have to

speak with the police, as will other lay persons. A considerable amount of protected speech will be affected if attorneys and others cannot determine what might constitute information pursuant to this statute. Attorneys routinely ask their criminal clients whether or not they are guilty of the crime charged. If a client admitted to his attorney that he or she is guilty, and if a prosecutor asked the attorney who knew that information if his client was guilty, that could subject that criminal attorney prosecution under this statute. This is so because it would be a misrepresentation to state that his client is not guilty, and the fact the client was guilty could be information that would delay the prosecution, therefore, a reply that his client was not guilty could subject that attorney to being charged pursuant to this statute. In other words, the attorney's failure to answer truthfully would be a misrepresentation which delayed or prevented the communication of information relating to a violation of any criminal statute to a prosecutor. Because there is not a more definitive statement regarding what information is within the ambit of the statute, the statute is vague.

Mr. Carrasco was also charged with violation of A.R.S. § 13-2510. That charging document read as follows:

On or about the 26th day of May, 1998, LOUIE NMN CARRASCO, with the intent to hinder the prosecution, of Ramon Carrasco for molestation of a child and/or sexual abuse of a child and/or sexual conduct with a minor, rendered assistance to Ramon Carrasco by: preventing the alleged victim's attorney, Valentine Shaffer, from communication with her clients by telling Ms. Shaffer that he would set up a

meeting with her clients only if she agreed to prevent further contact between them and the Tucson Police Department, rendered assistance to such person, in violation of A.R.S. §§ 13-2510, 13-2512 (A) and (B), 13-603, 13-701, 13-702, 13-702.02 (A) and (B), 13-801, 13-804, and 13-811.

Neither parts 1, 2, 3, 5, or 6 of the statute could possibly apply to the action for which Mr. Carrasco is charged. A.R.S. § 13-2510 reads as follows in pertinent part:

For purposes of §§ 13-2511 and 13-2512 a person renders assistance to another person by knowingly:

4. Preventing or obstruction by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of the other person.

In this charging document, again, Mr. Carrasco is charged with a violation of the statue merely for what he said to Valentine Shaffer, pure speech. And again, the State has not alleged any facts in the charging document that Mr. Carrasco's telling Valentine Shaffer that he would try to set up a meeting between her clients and herself if she would protect her clients from the police fell within any of the exceptions to protected speech.

The statue is vague and overbroad in that it criminalizes protected speech. As stated before, the fact that this statute is being used in this case to punish protected speech establishes that it is vague or overbroad, or both.

Furthermore, the statute will also sweep within its ambit persons not before the court. If Mr. Carrasco can be criminally charged and prosecuted

for what he said to Valentine Shaffer, it will certainly have a chilling effect on all members of the bar of this state.

DATED this 26th day of January, 2000.

Vernon E. Peltz, Attorney for Defendant

APPENDIX D

FILED PATRICIA A. NOLAND CLERK,
SUPERIOR COURT

ARIZONA SUPERIOR COURT, PIMA COUNTY

February 18, 2000 (2: 10 p.m.)

By: G. Ross

HON. RICHARD NICHOLS
CASE NO. CR - 64234

COURT REPORTER: Denise Gonzales

DATE: February 18, 2000

STATE OF ARIZONA
vs.
LOUIE CARRASCO

MINUTE ENTRY
DEFENDANT'S MOTION TO DISMISS:

Defendant not present, out of custody.

Mr. Peltz argues the motion to the Court

THE COURT FINDS that A.R-S. 13-2409 and 13-25 10 are not vague or overly broad. Therefore,

IT IS ORDERED defendant's Motion to Dismiss is denied.

APPENDIX E

IN THE SUPERIOR COURT
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA,
Plaintiff,
VS. **CR-64234**
LOUIE NMN CARRASCO,
Defendant.
---- - ----------
BEFORE: THE HONORABLE RICHARD D. NICHOLS, JUDGE
Division 14

APPEARANCES: LEWIS BRANDES, Esq. on behalf of the State;
VERNON E. PELTZ, Esq. on behalf of the Defendant.

EXCERPT OF JURY TRIAL, DAY ONE TESTIMONY ONLY

June 20, 2000

Denise M. Gonzales, RMR Certified Court Reporter
CCR No.50161

PIMA COUNTY SUPERIOR COURT

actually became going as far as the first you ever heard of that case?
A. I was -- I first learned of the allegations against Mr. Ramon Carrasco on May 15th, 1998.
Q. Do you remember how it was that you were contacted without telling what was said? Simply how were you contacted in order to become the investigator on the case?
MR. PELTZ: Objection, relevance.
THE COURT: Overruled.
A. As is what normally happens with my units, a uniformed patrol officer will normally be working in the field and will receive a 911 call. And this particular call reported a child molest. And as is also normal even follow-up detectives from my unit are designed to brief with the uniform patrol officers and learn about preliminary allegations.
Q. And to that end did you ever come into contact with somebody by the name of Desiree Wabich, April Colpitts, or Fonda Carrasco?
A. Yes, I did.
Q. And when did that take place?
A. That also took place on the 15th, 1998.
Q. And where did that take place?
A. I believe my initial meeting with them was at the midtown police station.
Q - At some point while you were there or somewhere else on May 15th did you ever interview any or all of those people?
A. I interviewed Desiree Wabich, April Colpitts, and Fonda Carrasco at that time.
Q. And with -- I mean was that a short set of interviews? How lengthy was that process?

A. It was a very lengthy process. That process took several hours.
Q. Were they memorialized, those interviews, in some fashion?
A. They were. They were tape-recorded and documented.
Q. At some point while you were with Mrs. Carrasco after the interview did you ever learn as to where she was intending to be over the weekend as far as whether or not she would have contact with Ramon Carrasco?
A. At the conclusion of my meeting with Mrs. Carrasco and the two girls that I spoke with that night she was advised that she should not allow any of the children to have any contact with the alleged perpetrator in the case. She was also -- she agreed to that, was very supportive of her children at that time and said she ma y take them,to a hotel over the weekend.
MR. PELTZ: Objection, Your Honor, calls for hearsay. Beyond the scope.
THE COURT: Sustained.
BY MR. BRANDES:
Q. Was Rebecca Horlander there?
A. Yes, she was.
Q. With her mother?
A. Yes.Q. As far as you know, were they going home?
MR. PELTZ: Objection, calls for speculation.
A. No.
THE COURT: Overruled.
A. They were not going home.
Q. At some point thereafter did you go back -to the Carrasco home at any point or someone go back to the Carrasco home that same day?
A. Yes. Myself; Reynaldo Valenzuela, the CPS

emergency intake worker; and another detective, Detective Martinez from the Tucson Police Department, accompanied me to Ramon Carrasco's residence.
Q. Was who -- was anyone home?
A. Mr. Carrasco was present.
Q. Which, who are we talking about?
A. Ramon.
Q - Was Mrs. Carrasco, Fonda Carrasco or any of the three girls?
A. They were not there.
Q. Do you remember if this was in the evening? Was it daytime? What was it?
A. I would say that it was evening.
Q. At some point did you speak to Ramon Carrasco?
A. I did.
Q. At any point did you learn from Ramon Carrasco anything that gave you any new information that you had from the interviews you had just had with the girls and Mrs. Carrasco?
MR. PELTZ: objection, calls for hearsay.
THE COURT: Overruled.
A. After speaking with Ramon Carrasco, I learned at that point in time based on the statements that he had made and admissions that he had made that Rebecca Horlander was also a victim in this crime.
Q. And that was as of 05/15/98?
A. Yes, May 15th, 198.
Q. Was your interview with Mr. Ramon Carrasco memorialized in some fashion?
A It was tape-recorded, transcribed and documented as the others.
Q. Any follow-up that you know of that night that you participated in on 05/15?

A. No.
Q. How about over the weekend, Saturday or Sunday?
A. There were events that transpired over the weekend. And I only participated in that. I spoke on the telephone with people.
Q. Did that include at all arranging a follow-up meeting with Mrs. Carrasco?
A. No. I did not speak directly with Mrs. Carrasco over the weekend.
Q. At some point did you set up or have set up a meeting with either Fonda Carrasco and any of the girls?
A. Yes.
Q. And do you know when that took place?
A. The follow-up meeting and interviews took place on May 19th, 1998. It was the following Tuesday.
Q. Where did that take place?
A. That took place at some CPS office in the midtown area in an interview room there.
Q. Who was present for that?
A There were several people there, RebeccaHorlander; April Colpitts; Desiree Wabich; Detective Antigone Foust; the CPS emergency intake worker, Reynaldo Valenzuela; myself; Fonda Carrasco. Ramon Carrasco arrived and Mr. Louie Carrasco was present, also.
Q. Now did you interview Desiree and/or April and/or Rebecca during the May 19th?
A. Yes. I interviewed Rebecca and Desiree and participated at the tail end of an interview with April.
Q. Now, at some point after these interviews took place did the girls leave the facility, do you know?
A. At the conclusion of the day the girls did leave the facility, yes.
Q. And do you know where they went?

A. I do not know specifically where they went. I only know they were taken into Child Protective services' custody and placed in various shelters.
Q. How do you know that?
A. I know that because Reynaldo Valenzuela --old me that.
Q. Was he there?
A. He was present.
Q. Now, as the intake person, is he the one that would do that?
A. Yes.
Q. At some point on the 19th you said you came in on the tail end of April Colpitts' interview. Did April seem at all in your presence -- did she ever try and leave?
A. Yes, she did.
MR. PELTZ: Objection, assumes facts not in evidence, foundation.
THE COURT: I'll let that answer stand.
BY MR. BRANDES:
Q. Were you present when she tried to leave?
A. Yes, I was.
Q. And what did you do about it?
A. I stopped her from leaving.
Q. How?
A. April was very upset when she learned that she was not going to be returning home, that she was going to be placed in shelter. She got up ran out of the room. Myself and Detective Foust stopped and detained her in the outer area, the outer corridor area of the office interview room that we were using and Drought her back in.
Q. Did you hit her?
A. No.
Q. Did you tackle her?

A. Absolutely not.
Q. So what do you mean by detain? What do you physically mean?
A. She didn't have anywhere to go. Detective Foust came around one side. I came around the other side. She stopped at one of those kind of wobbly temporary utility poles you see in an office building with a lot of cubicles. There are computer ports and wires that run up and down. She stopped at one of those. It's about yea big, six-by-six I suppose.
And she just stood there, faced the pole, put her hand on the pole. We began to talk to her. I know that I began to talk to her to assure her that running away was not going to be the answer at this point and asked her to come back in the room with me.
Q. What was her demeanor like then?
A. Oh, she was crying. She was terribly -upset. She was angry, understandably so. She didn't want to -- she didn't really have any choices. But she gave the impression to me she just didn't like what was happening to her.
Q. At some point did she go back to the room and talk to you?
A. She came back probably less than a minute and a half.
Q. At some point after the 19th after the girls left CPS, the girls left CPS, turning your attention to the 20th, did you ever get in any contact in some fashion with a man by the name of Louie Carrasco?
A. I did.
Q. What was the purpose of that?
A. I believe that Mr. Carrasco, Mr. Louie Carrasco telephoned me. And in the course of my conversation with him, he told me to stop harassing the victims.

And he identified himself as Ramon and Fonda's attorney. I asked him if he was an attorney, and he said that -- that he was. And I asked him if he was a criminal defense attorney.
Q. Let me stop you there for a second. Prior to the 19thth or 20th had you ever heard of him before? Did you know who he was?
A. No.
Q. So did you arrange anything with him on the 20th over the phone regarding Ramon and Fonda and any kind of arrest?
A. Yes. In that conversation in which I was confirming in which he was in fact a criminal defense

CROSS EXAMINATION OF DETECTIVE CHARLTON

Q - In other words, in other words, it was upon finding out that you're not going home that April Colpitts became so upset?
A. Yes, that's true.
Q. And that she tried to leave?
A. Yes.
Q. Now, you mentioned that -- that it's hard for you to conduct an investigation if people won't talk to you. When you testified for Mr. Brandes you mentioned that it's hard to do an investigation if they won't talk to you?
A. Well, I need to get information from people to know whether or not we have a case to proceed with.
Q. Okay. Because it's hard to investigate without people talking to you. Can you force them to talk to you because of that?
A. Oh, no.
Q. Is there anything wrong with somebody telling you

that they don't want to talk to you and they won't talk to you?
A. Well, no, no. Everyone has that option.
Q. Excuse me. I didn't mean to interrupt you. As a police officer if somebody tells you they don't want to talk to you, is it your training and experience -.hat you should respect that request and not talk to .....
A. That's okay.
Q. And the answer to your question is no? Did you go over it fairly thoroughly during the break?
A. Yes, I did.
Q. How many pages is that?
A. Thirteen pages.
Q. Thirteen pages? And what, about an average of ten questions or so on a page, roughly?
A. Around 43 lines per page.
Q. Detective Charlton, did you ever tell or communicate to Mr. Carrasco whom you believed were the victims in this case, did you ever tell him?
A. At the time that Mr. Carrasco, Fonda Carrasco and Ramon Carrasco were advised that all three girls were going to be placed in CPS custody. I did not personally go around the room and tell each person individually who the victims were in the case.
But since all three of those girls were being taken into CPS custody, the allegations had been made clear to all parties present. It was pretty clear that everybody knew who the victims were in the case.
Q. Okay. That doesn't answer the question I asked you. I asked you if you ever personally told Mr. Carrasco whom you believed were the victims?
A. I believe I answered that. I said that no, I did not personally go to each individual in the room and say

who the victims in the case were.
Q. That would include Mr. Carrasco?
A. He was in the room that at the time they were advised who was going to be taken into custody.
Q. Now, did you have -- you have any knowledge or do you know what was said by Mr. Carrasco to Rebecca Horlander during the phone call that Priscilla Ortiz put through, do you know what was said then?
A. Rebecca Horlander told me some of the things that were said.
Q. Did you monitor the call and do you have any independent recollection other than what Rebecca Horlander told you? Did you monitor that call?
A. Oh, no. I didn't monitor Rebecca's telephone call.
Q. So then the only thing you know about that call was what Rebecca Horlander would have told you?
A. Rebecca Horlander told me some of the things that Mr. Carrasco told her, yes.
Q. Okay. The -- the obstructing justice statute, are you familiar with it?
A. Uh-huh.
Q. The statute on obstruction justice indicates there's lots of ways that you might obstruct

DIRECT EXAMINATION OF DETECTIVE FOUST

Q - At some point was there ever any discussion about whether the girls were living with him?
A. Well, there was some sort of a discussion. But I was standing at the doorway. And I don't know specifically what would have been said during that discussion, but that Reynaldo Valenzuela was present for that.
Q. In any case did you actually see them leave the

building, Fonda and/or Ramon and/or Louie?
A. I don't recall whether I watched them walk out or not.
Q. But in any case when they got -- were leaving did you see the girls go with them?
A. No. I know that the girls did not go with them because I stayed and had further conversations with several. Actually, with what, I remember, April about being transported to a shelter at a later point in time,
Q. Let's get into that. At some point we discussed that with Detective Charlton. I'll ask you about that. At any point did April become upset in any way
A. Yes.
Q. And can you describe what that was without telling us what was said, simply what was done?
A. I was in the interview room that I already told you about, and I was interviewing April. And when I told her that she wasn't going to be going home on that particular day, she become very upset, stormed out of the room and started running down the hallway.
Q. And what in response to that did you do?
A. I went in one direction to cut her off from the two exit doors that are there in that building. Actually, they are there, exit doors in that direction. .And Detective Charlton came out of the observation room and ran around the cubicles the other way in chase basically of April.
Q. Did you hit her?
A. No.
Q. That is April I mean.
A. No.
Q. Did you do anything physical to her, you personally?
A. When she stopped at a barrier or pole that sticks

out that has the electrical wires there in the office, I may have had a hand on her. But basically what I remember is standing right next to her there between her and where the exit doors are. And Detective Charlton was on the other side of her. And there was a conversation going on at that time.
Q - Well, for example, did you throw something at the wall?
A. No.
Q. How much force did you use when you both touched her?
MR. PELTZ: Objection, foundation.
THE COURT: Sustained, yeah.
MR. BRANDES: May I clarify touch?
THE COURT: Let's move on to another area.
BY MR. BRANDES:
Q. Did she go back to the room with you?
A. Yes, she did.
Q. Did she go back under her own power?
A. Yes.
Q. Did you continue talking to her?
A. Yes.
MR. BRANDES; I have no further questions I guess. I'm sorry. I apologize, Mr. Peltz.
BY MR. BRANDES:
Q. Just to be sure, did this take place on the -9th?
A. Yes, it did.
Q. Did you have any further investigatory work in this case as to the 19th that involved direct contact with these girls?
A. Yes.
Q. When did that occur?
A. I believe the date that I had contact with Desiree was the 22nd of May.

Q. And
A. And Rebecca as well on that same day.
Q. You spoke to her?
A. Yes.
MR. BRANDES: I have no further questions. I'm sorry.
CROSS-EXAMINATION BY MR. PELTZ:
Q. Detective Foust, it would be fair to say that April Colpitts was upset about being kept at CPS custody and that she made that pretty clear; right?
A. I would say that she was unhappy to be in the building.
Q. And, in fact, it was as soon as you told her she was not going to go home that she jumped up and tried to leave; correct?
A. Yes.
Q. That was the immediately preceding event?
A. Yes,
Q - Now, do you believe that you can force somebody to talk to you if they don't want to talk to you., an individual?
A. No.
Q. Is it okay for somebody to tell you tha t they don't want to talk to you?
A. Certainly.
Q. And as a police officer if somebody tells you that they don't want to talk to you, are you going to honor that request and respect that request?
A. It would depend upon the circumstances.
Q. Okay. Why would it depend on the circumstances?
A. Well, if I am interrogating someone that's in custody and they tell me they don't want to talk to me, I stop talking with them at that moment because that's what the Miranda warnings say I have to do. However, if I'm talking to you as a witness or a victim

and you tell me that you don't want to talk to me, I may question you further as to why you don't want to talk to me and if there's anything I can do to change your mind. Because there's lots of reasons people don't want to talk to the police.
Q. Could you do anything to force people to talk to you?
A. Certainly not.
Q. Even if you thought -- even if you thought there were serious allegations, could you force that person to tell you about them?
A. I don't twist anybody's arm. I can't make you talk to me, no.
Q. Oh, there's a there's been some discussion about a journal entry from Desiree Wabich, a little book, notebook.
A. Yes.
Q. Do you have any idea when Ms. Wabich acquired that notebook?
A. No.
Q. Do you have any idea how old it was?
A. No.
Q. I am led to believe or understand that there was a phone number of Mr. Carrasco in that book that appeared in the book somewhere.
A. I'm told that as well; however -
Q. Do you have any information of when that was put in there?
A. No.
MR. PELTZ: That's all I have, Your Honor. THE COURT: Redirect?
MR. BRANDES: No.

APPENDIX F

IN THE SUPERIOR COURT
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA,
Plaintiff,

VS. CR-64234

LOUIE NMN CARRASCO,
Defendant.

---------- ------- -

BEFORE: THE HONORABLE RICHARD D. NICHOLS, JUDGE
Division 14
APPEARANCES: LEWIS BRANDES, Esq.
on behalf of the State;
VERNON E. PELTZ, Esq. on behalf of the Defendant.
EXCERPT OF JURY TRIAL, DAY TWO TESTIMONY ONLY
June 21,20.00
Denise M. Gonzales, RMR Certified Court Reporter
CCR No.50161
PIMA COUNTY SUPERIOR COURT

CROSS-EXAMINATION OF VALENZUELA:
Q. Mr. Valenzuela, when did you first become involved with this case?
A. On the 15th of May.
Q. On the 15th of May?
A. Yes.
Q. Isn't it true that the principal girls in :his case, namely April Colpitts and Desiree Wabich, had recanted or changed their original stories about what had happened shortly after the 15th?
A. Yes.

Q. Isn't it true that it was somewhere about :he weekend like Saturday, Sunday maybe on the 16th or 17th?
A. That was my understanding, yes.
Q. And you didn't meet or know that Mr. Carrasco was involved in this case until at least a couple of days after that; isn't that correct?
A. On the 19th.
Q. And when you -- when you performed your duties do you take written case notes about the case indicating what you've done and who you've contacted?
A. I do.
Q. And you write those down and record them in the ordinary course of your business -
A. Yes.
Q. -- your duties? Tell me., do you know whether or not there were any complaints from anybody prior to the 19th about the way those girls were being treated in the hands of CPS?
A. Prior to the 19th I had not heard of any complaints, no.
Q. Are you sure that you didn't hear of any complaints about the treatment of those girls while in CPS custody and the way they were being treated by the officer or CPS prior to the 19th?
MR. BRANDES: Objection, since -- it's misleading since by definition, they weren't in CPS custody until the 19th.
THE COURT: Overruled. You can answer the question.
A. As far as I recall, yes.
Q. Don't you remember Mr. Carrasco calling you and making a complaint about the girls' treatment in the hands of the CPS police?

A. I don't recall that, no.
Q- Mr. Valenzuela, I'm going to hand you what has been marked as Defendant's Exhibit A. Can you tell me if you recognize what that is?
A. It's a case note from CPS.
Q. Who drafted it, do you know?
A. I did.
Q. Does it indicate on that form the date of that incident?
A. The 20th of May was the contact date.
Q - The date that the incident was -- happened".? Isn't there a date on there, a date that you drafted the note and a date of the incident?
A. The draft date is the 7th of -- July 17th. The contact is May 20th.
Q. Okay. So on the 20th did you receive a complaint from Mr. Carrasco?
A. I received a call from Sue Brant who is the supervisor 'for the nights and weekend units.
Q. Okay. And do you remember what that complaint was?
MR. BRANDES: Objection, hearsay.
THE COURT: Sustained.
BY MR. PELTZ:
Q. Isn't it true that the complaint that you got was that the girls were being mistreated -
MR. BRANDES: Objection.
THE COURT: Sustained, yeah.
BY MR. PELTZ:
Q. Now, didn't the girls also themselves complain to you about their treatment?
A. They did.
Q. Didn't they also complain that they felt like they were being abused and that there was allegations that

they had been mistreated by the officers, thrown up against a wall, things like that?
A. There were those allegations, yes.
Q. And do you remember when those first -when you first heard those?
A. The exact date, no, I don't.
Q. And isn't it true that -- that Rebecca Horlander was so upset by what was happening to her while she was at the CPS office, that she had to be taken to the Emergency Room?
A. She was taken to an Emergency Room. It was never medically documented why or -- to my -- to my knowledge.
Q Isn't it true that Rebecca told you that she went to St. Joe's because she felt like she was pressured by CPS?
A. She did make that statement, yes.
Q. And that was on -- now, Mr. Valenzuela, have you ever had anybody, any of your wards in CPS custody that by the time they came to CPS custody, they had already had an attorney for one thing or another? I mean have you ever had somebody that had more than one attorney, any of your wards?
A. In an adoption case I believe I did.
Q. So it's possible for -- it's possible for somebody to have more than one attorney, to have the attorney that is appointed by the Court when you make you file your petition and to have another attorney on another matter? That is possible, isn't it?
A. On a separate matter, yes.
Q - And, in fact, that h as happened, you had a ward with that very situation?
A. Yes.
.....

Q. He can look up this shelter's phone number in the phone book?
A. I don't know. He had the number.
Q. And did he ask to speak to anybody?
A. He asked to speak to Rebecca.
Q. And did you just give her the phone or what did you do?
A. No. I asked him who he was. She said he was her lawyer.
Q. Did you do anything to check on that?
A. There's no way to be able to check on that. We just take the word of that person.
Q - Well, for example, ma'am, if the person at the other end of the phone had told you I'm the attorney for Rebecca and I'm also the attorney for the man accused of any conduct that caused her to be in the shelter, would you have handed her the phone?
MR. PELTZ: Objection, calls for speculation.
THE COURT: Sustained.
Don't answer.
BY MR. BRANDES:
Q. Don't answer the question, ma'am. So if he had said he wasn't her attorney, just any attorney, would you have handed him the phone?
A. Yes, I would have. There's no way of scanning the phone calls.
Q. No. But I mean how would you know who you've given the phone to?
A. I don't know.
Q. So you take the person's word for it?
A. I would take his word for it.
Q. Had you ever heard of that person either before or

since that conversation?
A. No, just that day. Wait a minute. One more time. When at that time her case -- I don't recall who her case worker was at that time. He informed us that there were no more phone calls allowed for that person to call.
Q. Did you stick around for Rebecca's part of the conversation?
A. No.
Q. You just gave her the phone?
A. Yes. It wasn't told to us to monitor her phone calls.
Q. And do you remember how long Rebecca had been at the shelter prior to that?
A. Not too many days, maybe less than a month or month. I'm not sure, I can't remember.
Q. Could it have been as low as one day?
A. It's a possibility. Kids come and go all the time.
MR. BRANDES: I have no further questions.

CROSS-EXAMINATION BY MR. PELTZ:

Q. Ms. Delgado?
A. Yes.
Q. I don't -- I don't know if I maybe didn't hear it. It was said so quickly. Did you not -- did you just now testify that if Mr. Carrasco -- if somebody calls up to the shelter and says he is an attorney, that you're going to put that call through?
A. We take their word. There's no way of scanning the phone call whether it's their attorney or not unless -- unless the case worker tells us specifically if they're not allowed to talk to nobody out them.
Q. So, in other words, anybody that calls up and say says I I'm an attorney, I want to talk to so-and-so, call

goes through?
A. That's right.
Q. Regardless if he says I'm her attorney or

DIRECT EXAMINATION OF REBECCA

A. No, I don't remember where it was.
Q. Do you remember ever talking to the police, though, at some point after May 15th, 1998?
A. Not that I recall.- I probably did, but I can't remember at the moment.
Q. Do you remember a Detective Charlton at all?
A. Uh-huh, yes.
Q. How do you feel about Detective Charlton?
A. I don't like her.
Q. Why not?
A. Because I think she's rude and she manipulates people.
Q. Let's stop there for a second. That's the emotional side. How about the physical side? What did she do?
A. Yes. Apparently she, from what I saw, was in a room with no lights on. But I saw her grab my sister by the shoulders about right here and kind of push her against the wall (indicating).
Q. When you say push her against the wall, what did she do?
A. She grabbed her like that and pushed her against the wall.
Q. What wall was this?
A. I don't know which wall.
Q. Was that at CPS when you were there?
A. Uh-huh.
Q. You were in a different room?
A. Yeah.

Q. And when you saw prior to seeing that what was April doing prior to being grabbed?
A. I don't -- I don't know because I was in a room by myself. And I looked out the window because I wanted -- I was about to leave. I was really going to leave. And then -
Q. Why were you going to leave?
A. Because I didn't want to be there. I didn't know where I was. I didn't know who these people are. So, therefore, I did not trust them.
Q. Well, let's talk about you for a second. We'll get back to April in a second. Did Detective Charlton ever push you against the wall?
A. No.
Q. Ever touch you in any way?
A. No.
Q. So what else did she do? What did she do o manipulate you?
A. She basically turned everything I had said around about things.
Q - Well, like what?
A. She would ask me questions. And that I've never spoken to a police officer, you know, in my being, and I never knew how they would act. And she would change things that I would say around.
Q. Well, do you remember being asked about Ramon? Is that what the conversation was about?
A. Yes.
Q. And did that have to do with allegations against you with Ramon? Is that right?
A. With me?
Q. Yeah, that he had done something inappropriate to you.
A. No. It had nothing to do with me.

Q. Isn't that what was being asked about?
A. Yeah.
Q. It had to do specifically with rubbing lotion; right?
A. I can't be sure at the moment. I'm not sure about that. It was something about him.
Q. You were never alleging in any kind of sexual allegation against Ramon; correct?
A. Huh-uh.
Q. You never said he had done anything sexual shelter did you come to understand even maybe after that conversation with Detective Charlton why you were in the shelter?
A. Not really. I -- I really didn't understand what was really going on. Maybe that was because I didn't want to.
Q. Well, you certainly understood what the the questions that were being asked of you; right?
A. Uh-huh.
Q. You knew it had to do with allegations about Ramon; right?
A. I didn't know that, you know. I knew that my sister and her friend, Desiree, had said some things. And I didn't know they like -- it had to do -- what it had to do with exactly.
Q. Well, on the 20th, though, did you ever have a conversation with Louie Carrasco on the phone at the shelter?
A. I don't remember a date, but I remember talking to him.
Q. Well, how many times at the shelter would you have spoken to him besides that one time?
A. I'm not sure. I can't be here sure on that.
Q. Well, how did you get in touch with him if he didn't call you?

A. At the shelter I would be allowed to go across the street to go on a walk, you know, to get out of the house because it was very stressful there for me. And I would -- I tried to get ahold of my mother, and he had her phone.
Q. How do you know that?
A. Because I had called her phone, and they said that I couldn't talk to my mom. And so to find out how, what was exactly going on, I had asked him and -
Q. Was that your mom's cell phone?
A. Yes.
Q. So let me just make sure. So you didn't know why you were there because you had done nothing wrong to your knowledge?
A. Yeah.
Q. And you weren't exactly sure why you were there on the 20th as far as anything about you and Ramon and him maybe doing something wrong; is that right?
A. Yeah.
Q. So when you spoke to Mr. Louie Carrasco on the phone did you understand you weren't in any trouble?
A. Uh-huh.
Q. You understood that?
A. Yeah.
Q - You just know you didn't want to be at the CPS shelter?
A. Yeah.
Q. So when you spoke to him on the phone what did he tell you?
MR. PELTZ: Objection, hearsay and relevance.
THE COURT: Overruled.
You can answer.
A. Answer it? Well, I just asked how my mother and Ramon were doing. And at that point I think -- I'm not

sure if it was at that time, but my sister had run away from there. And I wanted do know if they heard anything.
Q. Did they tell you anything about your rights?
A. Not that I recall.
Q. Well, did he ever tell you not to talk to the police?
A. I don't remember.
Q. I'm going to show you what's been marked Exhibit 2 for identification which is a 13-page document. Again, if you would take a look at it to yourself and see if you recognize what's in it. Do you recognize that at all, Rebecca?
A Not really.
Q. Well, would you dispute any -- I have the tape here if you want to listen to it. Certainly I don't want to get into this if I don't have to. Do you dispute you had another conversation with Detective Charlton the 22nd, a couple days after?
A. You mean do I remember having that conversation?
Q. Yeah.
A. Yes. Because I had talked to a CPS worker that same day. And I told him I didn't want to speak to him either.
Q. Your voice is fading away. Mine does that, too. But you have to sort of speak up.
A. I said yeah, I remember that day because it was when -- I believe it was the day I ran away.
Q. That was the day that you went to the hospital again?
A. Yeah.
Q. I'll get back to that in a second. But what I'm asking you, is that a transcript, what's in front of you, Detective Charlton? Do you have any reason to dispute it's accurate as to what you told her?

A. What do you mean?
Q. Do you have any reason to believe you didn't say those words that's written in that transcript that's marked Exhibit 2?
A. I don't remember. That was a long time ago.
Q. I understand you don't remember. I'm asking if you have any reason to believe you didn't say that.
A. I don't know what I said that day. I don't know if this is true or not. And I really don't want to hear that tape.
MR. BRANDES: Your Honor, we have a choice. I'll ask for a recess if you want to, whatever the Court's pleasure, to play the tape and present in court.
THE COURT: Direct her attention to the lines in question and see if those refresh her memory.
BY MR. BRANDES:
Q. Could you take a look at page four, please, Rebecca? Did you tell the police that on line seven that you wanted him -- meaning Louie -- to be your lawyer and you don't want Reynaldo coming to see you because you're going to hit Reynaldo, literally hit him? Remember saying that?
A. I remember saying that I wanted Louie to be my lawyer.

CROSS EXAMINATION OF REBECCA

Q - Yeah.
A . Yes.
Q - It says -- it's the 13-page one. It says that it is dated on May 22nd on the first page on the top. Do you see it?
A. Yes.
Q. Okay. Now, do you remember being asked when it

was that your Uncle Louie told you that you didn't have to talk to the police?
A. I don't remember being asked that.
Q. Would you look down on page six about line 35?
A. Yes.
Q. And when you were asked at that time when did he tell you that, what was your response?
A. I don't remember.
Q. Now, as I understand it, there were some times that you called Louie?
A. Uh-huh.
Q. And would it be fair to say that you called him much more than he called you?
A. Yes.
Q. Okay. And isn't it true that he only called you on probably one occasion while you were in custody
A Yes.
Q You don't remember what day it was, but you remember at least one call?
A. Exactly.
Q. Now, this is real important, Rebecca. Do you know whether or not Louie told you you didn't have to talk to the police on the call that he called you?
A. I don't remember him telling me I didn't have to, I don't remember that.
Q. So then if you were told that, it would have been on some call other than the one where he called you?
MR. BRANDES: Objection, misleading.
A. Yes.
MR. BRANDES: She said she didn't know.
THE COURT: Yeah, rephrase the question.
BY MR. PELTZ:
Q. Do you remember the phone call where Louie called you?

A. A little.
Q. Okay. During that phone conversation did Louie tell you that you do not have to talk to the police
A. I don't think he did. I don't remember.
Q. You don't remember whether he did or not?
A. I don't remember whether or not he did.
Q. Okay. Now, you were sure on one thing. You certainly wanted Louie to represent you; correct?
A Yes.
Q. If you wanted Louie to represent you for anything, what would it have been for?
A. To get me back with my mother, get me and my sister home.
Q. Did you ever talk to Louie about the complaints that you had with CPS and the police?
A. I think I might have, I'm not so sure. I might have. Because I remember telling him that that place was filthy, I did not like it and -
Q. Now, Rebecca, when you were -- when you were on -- when you had run away from the hospital -
A. Uh-huh.
Q. -- you said that you had a phone call with Louie?
A. I think so.
Q. Did -you tell him where you were, where you were staying, where you physically were?
A. I don't remember.
Q. Okay. Did Louie ever tell you that he wanted you to turn yourself in and go back to the home?
A. Yeah, he did. He was the one telling me not to run away.
Q. So the times that you were talking to Louie Louie was actually trying to convince you not to run away?
A. Yes.
Q. And he wanted you to stay there in CPS?

A. Yes. Well, he didn't want me to get in trouble I guess. I'm not sure why, but I guess that's why.
Q. And, Rebecca, isn't it true that most of the times when you were talking to Louie during those days when you were in custody it was about what was happening with your family?
A. Yeah.
Q. What was going to happen to you?
A. Yes.
Q - Whether you should run away or not?
A. Yes.
Q. And each time Louie told you he wanted you to stay there?
A. Yes.
Q. And if Louie told -- well, let me put it like this. Had Louie ever told you prior to -- prior to the time you were in CPS custody that you don't have to talk to the police?
A. I don't remember whether or not he did.
Q. Have you ever heard him discuss that in your family any other times he was there?
A. No, not that I know of.
Q. Okay. Now, when do you remember a phone call that Priscilla Ortiz asked you if Mr. Carrasco was your attorney when you were at the shelter the first time?
A. I said yes, I thought he was.
Q. And whether Mr. Carrasco was your attorney or wasn't your attorney, would you have said yes just so that you could talk to him?
A. Yes.
Q. Did you know that you would get to talk to people who were your attorney when you were at that shelter?
A. I was told by one of the girls there that - MR.

BRANDES: Objection.
THE COURT: Overruled. Go ahead.
A. That I was told by one of the girls there that I was not allowed to talk to like anyone except my attorney and like a social worker.
Q. Did you ever tell -- did you ever -- never mind. Did you make any complaints about what had happened to you in the hands of CPS and to you in CPS to your mother, Fonda?
A. What do you mean?
Q. Did you tell her what had happened to you, that you had saw this incident with your sister? Did you tell that to Fonda Carrasco?
A. I might have in the conversations I might have had of CPS.
Q. And the day that you called Louie Carrasco on the 22nd you asked him for help in making a decision on whether you should run away or not?
A. Yes, because I told him I didn't want to be there.
Q. Did you ask him for help with the abuse you felt you were getting?
A. What?
Q. Did you ask him for help or complain to him about the abuse you were getting?
A. Yes. He was really the only person I talked to.
THE COURT: I'll have to take the noon recess here in just a few minutes then. Can you wrap it

CROSS-EXAMINATION OF FONDA CARRASCO
Q. Fonda, you yourself had any experience like this, being involved in CPS and talking to police officers prior to this happening?
A. No.
Q. Did you know when this happened anything about

appointed attorneys, court appointed attorneys or things that were going to take place?
A. No, I didn't.
Q. From the time of the 15th until the 19th did you know that your -- did you know whether or not your girls had attorneys appointed for them by the Juvenile Court?
A. No, I didn't.
Q. From the 19th to the 22nd did you know whether or not your girls had attorneys appointed for them by the Juvenile Court?
A. No, I don't believe I did.
Q. Did you find out from your girls at some point in time that they were alleging or at least complained of being abused at the CPS station by officer Charlton and CPS staff?
A. Yes.
Q. When was that?
A. Every time I talk to Rebecca she would complain that Detective Charlton had been there and kept badgering her as Rebecca would say.
Q. What about April, did she have any complaints?
A. Oh, yes. April had quite a bit.
Q. When was the first time you heard those complaints?
A. Would have been actually the night of the the first night Rebecca went to the hospital April had told me about Detective Charlton throwing her up against the wall and getting in her face and yelling at her.
Q. Did you -- did you try to get an attorney or somebody to help your girls as a result of those comments?
A. Yes, I did.

Q. Who did you talk to?
A. I believe the first attorney I talked to was Louie.
Q. Did you talk to any other attorneys?
A. I talked to the juvenile attorneys. I believe we talked to you.
Q. All regarding --
A. And my criminal attorney, also.
Q. Who at that time was -
A. Mr. Plowman.
Q. Okay. So when you first -- when you first -- when this all first started happening on the 15th and the girls were in custody of CPS did you want them to have an attorney?
A. Yes, I did.
Q. Who did you want that to be?
A. I wanted Louie to take care of everything because I knew him and I trusted him.
Q. Did you know at that time they would have a court appointed attorney?
A. No, I didn't.
Q. Did Louie explain to you any of the rules about a conflict as far as representing those girls and representing Ramon at the same time?
A. I don't recall if he did or not. He may have.
Q. Okay. And you've talked to the -- you've told the prosecutor that you alternated from cooperating, not being so happy with what was happening and cooperating and not being so happy with what was happening; is that correct?
A. Yes.
Q. During any of the times that you weren't very happy with what you thought was happening did you ever tell any of your girls that they should not talk to the polite?

A. I know I told them -- I'm not sure of the time frame -- but they didn't have to unless they had an attorney present.
Q. But you don't remember when that was?
A. Huh-uh.
Q. Was it -- can you say in relation to when t his whole thing started how long, a week after that or shortly at that time?
A. It probably would have been within that first week.
Q. Did the girls ask you or did you volunteer that? Did they ask you if they had to talk to the police?
A. I know they asked me if they had to talk to Detective Charlton.
Q. April asked you?
A. April and Rebecca both.
Q. And you told them?
A. I told them not unless they had an attorney present, they didn't have to.
MR. BRANDES: Your Honor, may I approach --he witness?
MR. BRANDES: Same objection.
THE COURT: Sustained.
BY MR. PELTZ:
Q. Did you ever call?
A. No, I didn't.
Q. Did you ever ask Mr. Carrasco to make a complaint?
A. Yes, I did.
Q. And what did you ask him to make the complaint about?
A. The way the girls were being treated.
Q. Did you ever ask Mr. Carrasco if there was anything he could do to assist the girls in protecting them?

A. Yes.
Q. Did Mr. Carrasco ever -- well, before I go there, you indicated that you had an attorney, Mr. Plowman?
A. Yes.
Q. How soon after this started did you have Mr. Plowman?
A. I believe he was appointed the first time I came to court.
Q. Did Mr. -- I mean did you have Mr. Plowman as your attorney because Louie told you that he couldn't represent you and Ramon?
MR. BRANDES: Objection.
THE COURT: Overruled.
A. Yes.
MR. BRANDES: Foundation.
THE COURT: When was the conversation?
BY MR. PELTZ:
Q. When was that conversation?
A. That Louie couldn't represent both?
Q. Uh-huh.
A. I think we probably discussed it almost immediately when we found out that I was going to be arrested as well.
Q. Did you want Louie to be your attorney?
A. Yes, I did.
MR. BRANDES: Objection as to relevance.
THE COURT: Overruled.
BY MR. PELTZ:
Q. And he explained to you that he couldn't did he tell you why it was that he couldn't represent you and Ramon?
MR. BRANDES: Objection, hearsay.

APPENDIX G

FILED PATRICIA A. NOLAND
CLERK SUPERIOR COURT
Clerk SUPERIOR COURT, PIMA COUNTY
August 7, 2000 (2:03 p.m.)

By: June Lee -

RICHARD NICHOLS
CASE NO. CR-64234
REPORTER: Denise Gonzales

DATE: August 7, 2000
STATE OF ARIZONA
v.
LOUIE CARRASCO

MINUTE ENTRY
DEFENDANTS MOTION FOR JUDGMENT OF ACQUITTAL:
Defendant present, out of custody. Counsel argue to the Court. The Court has considered the arguments raised in the Motion for Judgment of Acquittal, those being:
1. the defendant may have actually been.Ms. Horlander's attorney on May 20, 1998. 2. That the evidence is unclear as to during which phone call the defendant told Ms. Horlander she did not have to talk to the police.
3. That ethical issues were improperly raised by the State.
4. That A.R.S. 13-2409 is vague and overbroad and therefore unconstitutional.

5. That the defendant's alleged misconduct was pure speech and thus protected by the First Amendment.
6. That the misrepresentation referred to in ARS. 13 3-2409 must be made to a potential informant. The Court rejects arguments #1 through #5.

THE COUTR FINDS, on reconsideration, that a misrepresentation to a third party rather than a potential informant ant does not satisfy A.R.S. 13-2409.

June Lee

Deputy Clerk

106

APPENDIX H

IN THE SUPERIOR COURT
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,
Plaintiff,

2 CA-CR 00-0337

vs.

NO. CR-64234

LOUIE NMN CARRASCO,
Defendant.

BEFORE: THE HONORABLE RICHARD D. NICHOLS, JUDGE

APPEARANCES:

LEWIS BRANDES, Esq.
On behalf of the State;
VERNON E. PELTZ, Esq.
On behalf of the Defendant.

MOTION FOR JUDGEMENT OF ACQUITTAL August 7, 2000

Denise M. Gonzales, RMR
Certified Court Reporter

investigation that was ongoing that was known to the Defendant.- And we proved to this jury beyond a reasonable doubt unanimously that yes, indeed there was a misrepresentation to someone in an effort to obstruct a criminal investigation, to wit. I mean the Court knows the theory.

So it was always that theory. it never changed. And it's been considered many times to whether or not it's sufficient to go forward, went to a trial, went to a jury verdict, and here we are.

THE COURT: There is the language in the Walker case we hold that misrepresentation in quotes, in the obstructing statute refers to what the Defendant says or does to a prospective informant or witness. And once we have the misrepresentation made to someone other than the prospective informant or witness, then we have to concern ourselves with what degree of removal that person occupies to Priscilla Ortiz or to her supervisor or to someone filling in for her.

So the Court has considered arguments raised in the motion for a judgment of acquittal, those being, number one, that the Defendant may have been Ms. Horlander's attorney on May 20th, 1998; number two, that the evidence is unclear as to when -- in other words, in which phone call the Defendant told Ms. Horlander she did not have to talk to the police; number three, the ethical issues were improperly raised; number four, that A.R.S. 13-2409 is vague and overbroad; number five, that the Defendant's alleged misconduct was pure speech; and number six, that the misrepresentation must be made to a potential informant.

The Court rejects issues one through five.

The Court does find that it erred in its ruling in regard to issue number six, that is, that a misrepresentation to a third party rather than a potential informant does not satisfy A.R.S. 13-2409, and that this was not harmless error. On this issue only the motion for a judgment of acquittal is granted, and the sentencing is vacated.

MR. BRANDES: The State will be filing its notice of appeal.

THE COURT: Thank you.

MR. PELTZ: Thank you, Your Honor.

MR. BRANDES: Thank you, Judge.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: You're welcome.

(The proceedings were adjourned.)